TESTIMONY OF BENNETT RUSHKIFF
CHIEF, CONSUMER AND TRADE PROTECTION SECTION
OFFICE OF THE ATTORNEY GENERAL

COMMITTEE ON CONSUMER AND REGULATORY AFFAIRS

MEDICAL INSURANCE EMPOWERMENT ACT OF 2005, BILL 16-190

October 3, 2005

Good morning Chairman Graham and members of the Committee. My name is Bennett Rushkoff. I am Chief of the Consumer and Trade Protection Section in the Office of the Attorney General for the District of Columbia.

Thank you for the opportunity to provide testimony at this hearing on Bill 16-55, the "Medical Insurance Empowerment Act of 2005." The Attorney General's interest in this matter is based on his common law authority to protect charities and charitable assets.

You have asked the Office of the Attorney General to testify as to GHMSI's charitable or legal obligations as they relate to the issues raised by D.C. Appleseed in its December 2004 report "CareFirst: Meeting Its Charitable Obligation to Citizens of the National Capital Area." The Attorney General has addressed GHMSI's charitable obligation in two memoranda to the City Administrator, dated March 4, 2005 and August 4, 2005. Copies of these memoranda are attached.

I will briefly summarize the Attorney General's conclusions. GHMSI was chartered by Congress as a "charitable and benevolent institution" that is to operate for the benefit of its subscribers. Because it is a *charitable* health insurer, GHMSI has a public health mission in addition to an obligation to operate on a non-profit basis, and the company's assets belong to the public. There is no inherent conflict between GHMSI's

obligation to serve the public and its obligation to serve its subscribers. The company's charter provides for the company to serve the public through service to its subscribers. Many other charitable organizations serve the public through service to a defined group of beneficiaries.

GHMSI's charter allows but does not require the company to serve the public in ways that are separate from its non-profit health insurance operations. The Department of Insurance, Securities, and Banking has correctly concluded that GHMSI has the legal authority – but not a legal obligation – "to engage in charitable activity beyond the provision of health insurance." In calling upon the GHMSI to increase its charitable giving, the Department has cited the company's "social responsibility" as "the major health insurer in the District." The Attorney General takes no position with respect to GHMSI's social responsibility to make charitable contributions to other organizations.

Focusing on what it means to operate as a "charitable and benevolent institution," the Attorney General has concluded that GHMSI cannot fulfill its public health mission merely by allocating a specified percentage of premiums, earnings, or surplus to distinctly "charitable" activities. Rather, GHMSI is to devote its entire operation to serving, directly or indirectly, its chartered purposes. GHMSI's board may choose to fulfill this obligation in various ways, such as using the company's profits and excess surplus to improve the quality, affordability, and accessibility of its health plans.

Moreover, to determine that GHMSI is operating consistently with its public health mission requires more than a finding that the company is operating as a non-profit, health insurance provider. It also requires a finding that GHMSI is treating the promotion of public health as its corporate mission, and treating other goals – such as

enhancement of company value – as only the *means* of advancing this mission. The central inquiry is whether the company's decisions are aimed at maximizing the promotion of public health or whether, as in the case of a for-profit insurance company, the promotion of health is merely a means toward a financial goal.

Let's take the specific issue of GHMSI's surplus. The maintenance of an adequate surplus is essential if GHMSI is to have the financial solvency necessary to fulfill its public health mission, especially over the long run. But the company would be acting contrary to its public health mission if it made the accumulation of surplus an end in itself. Maximizing asset value is a proper mission for a *for-profit* insurance company.

The Insurance Commissioner is in a good position to make an objective determination as to whether or not GHMSI's surplus is excessive for an insurance company of its size. However, the issue that the Attorney General has raised – whether or not GHMSI is accumulating surplus for the right reasons – cannot be resolved without knowing how and for what purpose the company has been accumulating as much surplus as it has.

The common law has long recognized the state attorneys general as guardians of the public's interest in charities and charitable assets. But the Attorney General for the District of Columbia does not now have the authority, other than by filing a court action, to compel the production of documents and testimony that could reveal the purposes behind a charitable corporation's conduct. For this reason, the Attorney General has proposed, and the Mayor is considering, legislation that would grant the Attorney General authority to subpoena documents and witnesses in the course of an investigation into whether a nonprofit corporation is acting contrary to its nonprofit purposes. With such

authority, the Attorney General would be in a much better position to fulfill this common law public protection role.

Thank you for the opportunity to present this testimony on behalf of the Office of the Attorney General.